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# Final Report of the Blue Ribbon Commission to Study the Effects of Government Regulation and Health Insurance Costs on Small Businesses in Maine, 1998

Maine State Legislature

Office of Policy and Legal Analysis

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**STATE OF MAINE  
118TH LEGISLATURE  
FIRST REGULAR AND FIRST SPECIAL SESSIONS**

**Final Report  
of the**

**BLUE RIBBON COMMISSION TO STUDY  
THE EFFECTS OF GOVERNMENT REGULATION  
AND HEALTH INSURANCE COSTS  
ON SMALL BUSINESSES IN MAINE**

**January 1998**

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to provide their employees health insurance; and encourage employees to participate in workplace health insurance plans.

3. The Commission recommends that the Maine Congressional delegation consider improving access to medical savings accounts and stepping up the phasing-in of the self-employment health insurance deduction. The Commission will communicate with the delegation and forward a copy of the report.

4. The Commission recommends that the private purchasing alliance laws be amended to encourage the establishment of alliances by removing the restriction on participation of insurance producers, independent producers and producer agencies in a purchasing alliance and by removing the requirement that a purchasing alliance be a nonprofit entity.

5. The Commission recommends that the Governor issue an Executive Order requiring each state agency to annually summarize statutory changes from the most recent Legislative Session, post summaries on the Internet and distribute the summaries to key constituencies.

6. The Commission recommends that the joint standing committee of the Legislature having jurisdiction over economic development matters periodically review the operation of the One-Stop permit center within the Department of Economic and Community Development. The purpose of the review would be to ensure DECD has adequate staff and resources to provide this service.

7. The Commission recommends that the Legislature's Presiding Officers write the chairs of each joint standing committee of the Legislature reminding the chairs of their committees' responsibilities under Title 5, section 8060 of the Maine statutes for reviewing regulatory agendas.

8. The Commission recommends that the Commission be reestablished to continue its study of the effects of government regulation on small businesses and report back to the Legislature by November 1, 1998.



Resolve 1997, chapter 85 established January 1, 1998 as the reporting date of the Commission. Due to the relatively short time frame that the Commission was given to complete its work, December 1, 1997 - January 1, 1998, the Commission decided to request a reporting deadline extension to January 16, 1998. The extension request was approved by the Legislative Council.

## COMMISSION'S CHARGE AND FOCUS

The Commission's first matter of business was to discuss its charge. The charge given to the Commission in Resolve 1997, chapter 85, addressed two areas and was very broad: To study the effects of: 1) government regulation; and 2) health insurance costs on small businesses throughout the State. Because the Commission had only a short time to complete its work, it decided to focus much of its effort on the effects of health insurance costs on small businesses. Members decided that the health insurance field provided defined issues that could be examined in a timely manner. In contrast, members decided that an examination of government regulation would require a significant amount of time in order to thoroughly survey problems and define solutions. Therefore, the Commission decided to take a cursory review of government regulation relative to small businesses and make recommendations regarding further review in this area.

### *Health Insurance: Areas Of Focus*

The Commission began its study of health insurance by identifying and defining the small group business market. In its findings and recommendations on health insurance, the Commission focused on four major areas: 1) the small business group market; 2) mandated health benefits; and 3) incentives for employers to provide health insurance; and 4) private purchasing alliances.

**Small business group market:** The Commission decided that its study of health insurance costs on small businesses would benefit from an examination of the current small group market in Maine. Among the issues the members decided to look at were:

- the types of insurance plans being utilized in the small group market;
- the pricing of insurance plans;
- the availability of insurance plans to small group employers and employees;
- private purchasing alliances; and
- the effect of community rating on the small group health insurance market.

**Mandated health benefits:** The Commission decided that there were several issues within mandated health benefits that they wanted to examine. These included:

- the Legislature's process for reviewing requests for mandated benefits;
- Maine's enactment of mandated benefits relative to other states;
- the application of mandated health benefits to various types of insured groups;
- the impact of mandated benefits on health insurance costs; and









requirements applicable to small group insurance policies.

### ***Definition of Small Group***

with fewer than 25 employees. However, as of July 1, 1997, a small group is one with 50 or fewer employees. This change in the definition maintains parity with how federal law defines a week. At the employer's option, part-time employees working as few as 10 hours a week or retired employees may be treated as eligible employees. Self-employed individuals with no other employed individuals an individual policy instead of a small group policy.

Elsewhere in Maine statutes, there are inconsistencies in the definition of small group or small members or 12 or fewer members from the applicability of the statute. And in the labor laws, small employers of 15 or fewer employees are exempted from the requirements of the Family does not make any recommendation on this , it noted these inconsistencies and believes that uniformity in the definition of small business

### ***Community Rating***

Community rating refers to the insurance plans prior to any adjustments in the rate. The community rate is determined by the rate may not take into consideration individual characteristics like gender, health status, claims experience or policy duration. The rate must be applicable to all eligible members of a small with children, another rate for an employee and spouse and another rate for an employee, spouse and children. Rates may also vary based on the size of the group.

rates for small group health insurance may not vary based on gender, rates may vary based on age, tobacco use, industry and geographic area but the variation may not be more than 20% above or below the "community rate" for all of these factors combined. For below the "community rate" in 1998; by more than 30% above or below the "community rate" in 1999; and after January 1, 2000, the rates may not vary by more than 20% above or below the

### ***Guaranteed Issuance***

maintenance organization that sell insurance to the small group market must provide coverage to any small employer who applies for coverage that meets the carrier's participation requirements.

and their dependents who do not have other coverage.

### ***Guarantee Renewal***

employees and their dependents except in cases of nonpayment of premium; fraud or material misrepresentation by the policy holder, employer or eligible individuals; noncompliance with the group market.

### ***Continuity of Coverage***

they change to another group or individual insurance policy if they had prior coverage at any time during the 90 days before the discontinuance of the replaced contract or policy or within 180 days

insurers waive any medical underwriting or preexisting condition exclusion to the extent that benefits would have been payable under the prior policy or contract. The requirements also continuity of coverage.

### ***Preexisting Condition Exclusion***

coverage takes effect may be subject to a preexisting condition exclusion of not more than 12 months. In large and small group contracts, a preexisting condition exclusion may relate only to

during the six months immediately preceding the effective date of coverage. A preexisting condition exclusion relating to pregnancy may not be imposed. And the absence of a diagnosis of the condition relating to that information.

It is important to note that the reforms enacted in Maine relating to small group insurance plans including guaranteed issuance, guaranteed renewal, preexisting condition exclusions continuity of predated the adoption of similar

these reforms in 1993, the federal law was not enacted until the passage of the Health Insurance Portability and Accountability Act of 1996. The federal law makes the requirements applicable to

many of the substantive provisions of the federal law, the Legislature needed to enact only

conforming legislation in the 118th Legislature's First Regular and First Special Session. The Commission noted that the enactment of these requirements at the federal level makes any changes in state law regarding small group health insurance unlikely without a corresponding change in federal law.

### ***Standard and Basic Plans***

All carriers selling small group health plans in Maine must offer 2 standardized plans defined by rule by the Bureau of Insurance. These plans called the basic and standard plan must meet the requirements for mandated coverage for specific health services, specific diseases and for certain providers of health services that are applicable to small group plans. The basic and standard plan differ in the benefit plan design and the premium rates. The premium rates charged by carriers for the basic plan may not exceed 80% of the corresponding rate charged by that carrier for the standard plan.

The effect of the small group (and individual) insurance market reforms described above have been evaluated in a recent report to the Maine Bureau of Insurance conducted by Towers Perrin Integrated Health Systems Consulting, a national actuarial and consulting firm. The report was completed in December 1997 and is now available from the Bureau of Insurance.

### **Mandated Health Insurance Benefits**

Mandated health insurance benefits refer to state laws requiring insurers and health maintenance organizations (and indirectly, employers) to provide certain benefits as part of health insurance policies and contracts. These types of laws were first enacted thirty years ago by state legislatures. A mandated insurance benefit is a statutory requirement that health insurance coverage be provided for specific health services, specific diseases or physical conditions or for services rendered by certain providers of health care services. Mandated benefits must be included as part of the overall benefit package provided to policyholders. A mandated offer is a statutory requirement that health insurance coverage for specific health services, specific diseases or physical conditions or for services rendered by certain providers of health care services be offered to policyholders as part of insurance policies. With mandatory offers, the policyholder has the option of purchasing insurance coverage for a specific benefit. While policyholders are not required to purchase coverage for the benefit, providers of health insurance are required to offer the specific coverage to policyholders at the policyholders' expense.

### ***Mandated Insurance Benefits Required Under Maine Law***

Under Maine law, there are more than 20 different mandated insurance benefits and 7 mandated offers of health insurance benefits that require coverage for certain health care services and certain health care providers under insurance policies sold in the State. While some mandated benefits exclude small groups of 20 or fewer employees, there are mandated insurance benefits that apply to both individual and small group policies as well as large group policies and contracts. A chart of mandated benefits required under Maine law is included in Appendix G.

In Maine, health insurance coverage is mandated for specific health services and specific diseases like:

- maternity, newborn and child coverage;
- mental health and substance abuse treatment;
- biologically-based mental illnesses;
- screening mammograms;
- breast cancer treatment, including inpatient hospital care, breast surgery and reconstruction after mastectomy surgery;
- metabolic formula and modified low-protein food for persons with inborn errors of metabolism; and
- medical supplies, equipment and self-management training for diabetics.

Mandated offers of health insurance coverage include:

- home health services; and
- cardiac rehabilitation services.

Health insurance coverage is also mandated for certain providers of health care services through requirements that the services of the providers be reimbursed by insurers. These providers include:

- dentists;
- psychologists;
- clinical social workers;
- certified nurse specialists in psychiatric and mental health nursing; and
- chiropractors.

Mandated offers of coverage and reimbursement for health care services are required for the services of:

- optometrists; and
- licensed counselors.

As noted above, the standard and basic plans required to be offered in the small group insurance market are also subject to any mandated insurance benefits made applicable to small groups. The main concern about mandated health insurance benefits is the impact of these mandates on the overall costs of health insurance premiums. Many insurers, health maintenance organizations and employers believe mandates have a significant impact on health insurance premiums, especially in the small group market. Another concern often raised is the effect mandates have on the flexibility of both insurers and employers to design the health insurance coverage offered to small groups and employees.

### ***Applicability of Mandated Insurance Benefits Laws***

Maine's insurance laws are contained in Title 24 and Title 24-A of the statutes and regulate entities licensed to sell insurance in this State. There are three types of regulated entities that are authorized to sell health insurance and health care plan contracts: nonprofit hospital and medical

service organizations, for-profit insurance companies and health maintenance organizations. Title 24 regulates nonprofit hospital and medical service organizations, e.g. Blue Cross Blue Shield, and Title 24-A regulates for-profit insurers and health maintenance organizations.

Maine laws relating to mandated health insurance benefits and mandatory offers of such benefits require that certain health care services, certain health conditions and diseases, or certain providers of health care services be included as standard benefits in insurance policies and contracts sold in the State. Depending on the particular benefit and the decision of lawmakers, these laws have been applied to all individual contracts, to all group contracts, to group contracts according to group size and to one, some or all of the types of regulated entities.

Recently, the scope of mandated benefits have been extended to health maintenance organizations as the operation of health maintenance organizations has grown throughout the State. While this has been the trend, it is important to note the dichotomy between the principles of managed care with its emphasis on preventive care and management of health care services and costs through a primary care physician and mandated health insurance benefits which legislate certain health care services and allow self-referrals without prior authorization of primary care physicians.

Maine's mandated insurance benefits laws do not apply to self-insured employer health benefit plans, to coverage provided through federal programs like Medicaid and Medicare and to coverage provided to federal employees. Self-insured plans are exempted from state regulation by the federal Employee Retirement Income Security Act (ERISA). ERISA preempts any State laws relating to employee benefit plans, including health plans. However, ERISA does contain a provision which preserves a State's authority to regulate insurance. Since ERISA's enactment in 1974, the courts have interpreted these provisions to remove self-insured employer health plans from the application of state laws regulating insurance companies and insurance contracts, including mandated insurance benefit laws. Nationally, it is estimated that more than 40% of all employer health benefit plans are self-insured. It is important to note that while Maine law requiring coverage for certain health care services does not apply to these types of programs there are provisions in federal law that require self-insured plans, Medicare and Medicaid to provide coverage for certain benefits and health care providers.

Generally, mandated health insurance benefits do apply to the State Employee Health Insurance Program. Because the State Employee plan is not a self-insured plan, the requirements of mandated benefits will apply to the state plan like all other group health insurance contracts. In one instance, however, the State Employee Health Insurance Program was exempted from the requirements of the mandated insurance benefit for self-referred chiropractic services.

### ***Review and Evaluation of Proposed Mandated Insurance Benefits***

Under current law, proposed legislation relating to a mandated health insurance benefit must be reviewed and evaluated by the Bureau of Insurance before being enacted into law. 24-A MRSA §2752. A copy of the provision is included as Appendix H. The statute requires that the joint standing committee of the Legislature having jurisdiction over the proposal hold a public hearing and determine the level of support for the proposal among the committee members. If there is

substantial support for the proposed mandate in the committee, the committee may request review and evaluation of the proposal by the Bureau of Insurance. In conducting the review and evaluation of the proposed mandated health insurance benefit, the Bureau of Insurance must address a number of criteria outlined in the statute that focus on the social impact, financial impact and medical efficacy of mandating the benefit as well as the effects of balancing those considerations. After review and evaluation has been completed by the Bureau of Insurance, a proposed mandated health insurance benefit may or may not be enacted by the Legislature. However, review and evaluation of the proposal is required before a mandated benefit may be enacted. A mandated offer (or option) is not considered a mandated health insurance benefit and does not require a review and evaluation.

Because of this statutorily required procedure, legislation proposing mandated health insurance benefits is somewhat unique as part of the committee process. After scheduling and holding a public hearing on a mandated health insurance benefit proposal, the committee generally discusses the proposal or holds a straw vote to determine the level of support for the proposal and to determine whether or not a request for a review and evaluation should be made to the Bureau of Insurance. If a review and evaluation is requested, the committee delays any further consideration of the proposal in work session until the review has been completed. While the review and evaluation must be completed in a timely manner, the bureau often needs a few months or more to gather the necessary information and conduct its review of the proposed mandate. Very often, the committee will carry over a proposed mandate bill from the First Session to the Second to allow the Bureau additional time to complete the review. The most recent reviews and evaluations of proposed mandates have been conducted for the Bureau of Insurance by a consulting firm, William M. Mercer, Inc. The Bureau of Insurance expects that it will continue to contract with a consultant for the preparation of reviews and evaluations requested by the committee.

Proposed mandates introduced in the Second Regular Session present a particular challenge for the Bureau of Insurance because bills cannot be carried over to the next elected Legislature and the review and evaluation must be completed before the end of the Second Regular Session. Once the review is complete, the committee begins work sessions on the proposed bill and reports its recommendation on the proposal to the Legislature.

Although review and evaluation is required by the statute, the Legislature is not bound to follow this procedure and may amend or even repeal the statute. As such, the procedures outlined in the statute reflect a policy decision more than a legal requirement. The process allows the Legislature to make determinations on mandated benefit proposals with the benefit of time and informed input from the Bureau of Insurance on the proposal's medical efficacy and social and financial impact.

### **Findings of Commission**

With regard to mandated insurance benefits, the Commission finds that mandates do have a direct impact on health insurance costs, especially if the cumulative impact of mandates are considered. The Commission notes that actuarial estimates are difficult to make about the individual and cumulative impact of mandated health insurance benefits. However, a recent study from the



National Center for Policy Analysis done by Milliman & Robertson, an actuarial firm, estimated the costs of 12 of the most common mandated insurance benefits nationally and found that cumulatively the mandates can increase costs by as much as 15%-30%. A copy of the study is included as Appendix K. And in a cost analysis conducted in late 1995, Rick Diamond, Life and Health Actuary with the Bureau of Insurance estimated that 7 mandated benefits required under Maine law have a cost impact. The cost impact was measured by determining if the benefit would be likely reduced or eliminated in the absence of a mandate. These mandates included mental health and substance abuse treatment, screening mammography, breast reconstruction surgery, treatment for metabolic errors and services provided by chiropractors and, possibly, dentists. Based on tracking the amount of health claims paid for mandated benefits and the total amount of health claims paid, the total cost of mandates was estimated to be 6% or less. However, this estimate does not reflect any cost impact of mandated benefits that became effective or were enacted after January 1, 1996. A copy of the memo prepared by Rick Diamond is included as Appendix I.

While the costs of mandated insurance benefits are considered by lawmakers, the Commission notes that mandated health insurance benefits often present a very compelling interest to the Legislature. In every legislative session, the Legislature is confronted with new proposed mandates or the reintroduction of mandate proposals not approved in past sessions. The Commission also notes the recent interest of Congress in enacting mandated health insurance benefits at the federal level that apply to health insurers and self-insured ERISA plans alike. These mandates address hospital coverage for maternity stays and mental health parity coverage.

The Commission finds that the current process for reviewing and evaluating proposed mandated insurance benefits should be improved so that the Legislature will have the benefit of useful information before making the policy decision about whether or not to enact future mandated health insurance benefits.

### **Private Purchasing Alliances**

Maine law authorizes the voluntary establishment of a private purchasing alliance. An alliance is a nonprofit corporation licensed under the Insurance Code to provide health insurance to its members through multiple unaffiliated carriers. Alliances are authorized to set their own standards for membership in the alliance. These entities are designed to provide additional options for the purchase of insurance by small employers. Although the law became effective in July 1996 and the rules governing alliances were finally adopted in March 1997, there are no licensed purchasing alliances in the State.



## **Findings of Commission**

The Commission finds that the legislative barriers to the establishment of a private purchasing alliance should be removed. The Commission does not believe there is any significant interest for the state to sponsor a purchasing alliance, especially one including state employees, but believes that the private sector should not be overly restricted by the licensing and regulatory requirements for a purchasing alliance. The interests of government in maintaining the proper oversight of the alliance for the protection of the enrollees and the interests of the private sector must be balanced. The Commission notes that the presence of a purchasing alliance for the small group market can increase access and competition in the market.

## **Tax Incentives**

The Commission discussed three tax-related issues that impact health insurance costs for small business: state tax incentives; medical savings accounts; and the deductibility of health insurance costs for self-employed individuals for federal income tax purposes.

### ***Tax Credits and Deductions for Small Employers and Employees***

During the First Session of the 118th Legislature, the Legislature's Taxation Committee considered three bills related to tax incentives for small employers and employees to have health insurance. LD 18, An Act to Give Small Business Employer Health Benefit Tax Relief, proposed a tax credit to employers of 50 or fewer employees for the lowest of: \$5000; 20% of the costs incurred by the taxpayer in providing insurance; or \$100 for each employee covered by the employer-provided health insurance. LD 70, An Act to Provide a State Income Tax Credit for the Costs of Health Insurance Paid by Individuals, proposed a tax credit equal to 50% of the health insurance premiums paid by individuals whether or not the individual paid the full premium or contributed toward the costs. The credit was limited to \$4000 per year. LD 164, An Act to Provide Tax Credits for Small Businesses Providing Health Insurance Benefits for Employees, proposed to provide a tax credit equal to 25% of the health insurance costs incurred by an employer of fewer than 25 employees. Although all of these proposals were voted out by the Taxation Committee "Ought Not To Pass", Commission members noted that there was interest in the proposals. The primary reason these proposals and other tax incentives were not fully considered was the decision by the Taxation Committee not to pursue individual tax reform proposals piecemeal but if possible to address overall tax reform. Members also noted that changes in the State's revenues and the available surplus in the upcoming session may be factors that will may positively influence the consideration of tax incentive proposals this session.

This session, the Legislature will consider two pieces of legislation addressing tax incentives in some manner. LD 1931, An Act to Create Incentives for Employers to Contribute toward the Costs of Comprehensive Health Insurance for Families. LD 1931 provides a credit to employers providing health insurance equal to the excess of health insurance costs over 7.5% of gross payroll; a deduction for individuals equal to 20% of the health insurance premium paid by the taxpayer; and a reduction in the calculation of income for the purposes of eligibility for the

Property Tax and Rent Rebate Program equal to the amount of insurance premium paid for preventive care. LD 1945, An Act to Minimize State Revenue Loss Due to Ineffective Health Coverage, provides a tax credit for any employee that pays at least 60% of the costs of an employee health benefit plan that meets the minimum requirements for a small group health plan. The credit is equal to the lowest of: \$5000; 20% of the costs incurred by the taxpayer in providing insurance; or \$100 for each employee covered by the employer-provided health insurance.

### ***Medical Savings Accounts***

Under federal law, a pilot program has been established for medical savings accounts. The program is limited to 750,000 individuals and available to employees of small businesses (50 or fewer employees) and to self-employed individuals. Medical savings accounts (MSA) are tax free accounts that can be used to pay for medical expenditures. Under the federal pilot program, individuals must be covered by a high deductible catastrophic plan and have no other health insurance coverage. The deductibles must range between \$1500 - \$2250 for individuals and \$3000-\$4000 for families. Contributions of up to 65% of the cost of the deductible for individuals and up to 75% of the deductible for families may be made to the MSA by either the employer or the individual. Money in the MSA may be used tax free for medical expenses or is subject to a 15% penalty for individuals under age 65. Individuals 65 or older can withdraw the money for any purpose but the withdrawals will be taxed.

Medical savings accounts became available through the federal program on January 1, 1997 and enrollments began then. According to a recent Internal Revenue Service report, only 22,051 medical savings accounts were established as of June 30, 1997. The Commission received information from the Bureau of Insurance that it is aware of two carriers offering the product in Maine.

Under state law, Maine does not have any statutory provisions allowing the establishment of medical savings accounts which would extend particular state tax benefits. The first state to enact a MSA law was Colorado in 1986. Based on information from the National Conference of State Legislatures, there are currently 23 states with laws addressing medical savings accounts in some manner.

### ***Deductibility of Health Insurance Costs for Self-Employed Individuals***

Under prior law, self-employed individuals were eligible for a federal income tax deduction of 30% from gross income for the costs of health insurance for themselves, their spouses and dependents. Recently, Congress increased the deduction beginning in tax years beginning after December 31, 1996. The deduction is phased in according to the following schedule: 40% in 1997; 45% in 1998 and 1999; 50% in 2000 and 2001; 60% in 2002; 80% in 2003, 2004 and 2005; 90% in 2006; and 100% in 2007. There is no equivalent deduction for state income tax purposes, although the state income tax is calculated on the basis of federal adjusted gross income which includes the deduction for health insurance costs.

## **Findings of Commission**

The Commission is very supportive of the concepts included in the tax incentive proposals but declines to recommend a specific proposal for the Legislatures' consideration. The Commission believes that a tax credit or deduction for small employers who provide health insurance and employees who contribute toward the costs of their employer-provided health insurance or provide their own insurance may increase the numbers of employers who provide insurance and the number of employees who take advantage of the benefit. In that regard, the Commission will share the report with the Joint Standing Committee on Taxation and work with them toward the enactment of legislation. Because it is likely that health insurance costs will continue to rise in Maine and throughout the United States, the Commission believes there should be a corresponding tax incentive for employers and individuals to maintain health insurance coverage. Further, the Commission does not recommend any specific state proposals addressing medical savings accounts or the deductibility of health insurance costs for self-employed individuals. With regard to the deductibility of premiums, the Commission notes that the federal tax deduction is carried through for state income tax purposes.

## **RECOMMENDATIONS**

**1. The Commission recommends that the review process for mandated benefits be amended by adding the following criteria:**

- **cumulative impact of mandates with addition of a proposed mandate**
- **impact of requiring a mandate to apply to state employee health insurance program**
- **applicability of a mandate to health maintenance organizations and its effect on concept of managed care**
- **extent to which provisions of a mandate are available under self-insured ERISA plans and collectively bargained plans**
- **prohibit proposed mandated benefits from being introduced in the Second Regular Session**
- **require the joint standing committee having jurisdiction over insurance matters to hold a public meeting for the presentation of review and evaluation by the Bureau of Insurance**
- **require the joint standing committee having jurisdiction over insurance matters to determine if proponents of a mandate have demonstrated need for review and evaluation of proposal by Bureau of Insurance**

Under Title 24-A Section 2752, proposed mandated health benefits legislation must undergo review and evaluation by the Bureau of Insurance before it can be enacted into law. While this procedure is not binding on the Legislature, the joint standing committee having jurisdiction over insurance matters has followed the procedures in Section 2752 when considering proposed mandates. The Commission found that the current process of review and evaluation of the social

and financial impact and medical efficacy of a proposed mandate could be improved by adding additional criteria.

**2. The Commission recommends that the Joint Standing Committee on Taxation and the Legislature consider enacting legislation that contains tax incentives aimed at individuals and small businesses. The Commission will forward a copy of the report to the Taxation Committee and work with Committee toward enactment of legislation. The purpose of the incentives would be to lower employee health insurance costs; encourage small businesses to provide their employees health insurance; and encourage employees to participate in workplace health insurance plans.**

During the Second Regular Session of the Legislature, the Joint Standing Committee on Taxation will be considering at least two legislative proposals relating to tax incentives for individuals and small businesses providing health insurance. While the Commission does not support one specific proposal over another, it believes that the Taxation Committee and the Legislature should carefully consider these legislative proposals.

**3. The Commission recommends that the Maine Congressional delegation consider improving access to medical savings accounts and stepping up the phasing-in of the self-employment health insurance deduction. The Commission will communicate with the delegation and forward a copy of the report.**

Representatives of small businesses raised concerns about the availability of medical savings accounts and stepping up the phasing-in of the federal income tax deduction for health insurance costs of self-employed individuals. Because these two issues are regulated under federal law, the Commission hopes that the Maine Congressional delegation will consider the concerns raised by the State's small businesses.

**4. The Commission recommends that the private purchasing alliance laws be amended to encourage the establishment of alliances by removing the restriction on participation of insurance producers, independent producers and producer agencies in a purchasing alliance and by removing the requirement that a purchasing alliance be a nonprofit entity.**

Although the Legislature has recently enacted legislation authorizing the establishment of private purchasing alliances, no private purchasing alliances have been established in Maine. The Commission found that there is interest in the business community in establishing an alliance, but that the current statute has restricted the development of an alliance. The Commission hopes that several changes in the statutory provisions will encourage the creation of private purchasing alliances in the State.







determination of whether the program's staffing and technical support are commensurate with the demands for information.

**3. The Commission recommends that the Legislature's Presiding Officers write the chairs of each joint standing committee of the Legislature reminding the chairs of their committees' responsibilities under Title 5, section 8060 of the Maine statutes for reviewing regulatory agendas.**

Maine law requires that agencies submit regulatory agendas for each legislative biennium. The agendas must be submitted between the beginning of a regular session and 100 days after adjournment. The Legislature's role in overseeing state agencies and monitoring rules would be greatly enhanced if legislative committees fulfilled their statutory requirement to review agencies' regulatory agendas. Because of the somewhat flexible deadline, it is possible that the review by the legislative committees could take place between sessions or in the Second Regular Session. A letter from the Presiding Officers to committee chairs at the start of each First Regular Session of the Legislature would ensure this review process is observed.

**4. The Commission recommends that the Commission be reestablished to continue its study of the effects of government regulation on small businesses and report back to the Legislature by November 1, 1998.**

The Commission found that time constraints affected its ability to fully study the issue of how government regulation impacts small businesses. The Commission believes that questions relating to the impact of regulations are complex and require additional study. The Commission has drafted a joint order reestablishing the Commission for the purpose of studying the effects of government regulation on small businesses. The Commission's chair will seek introduction and approval of the joint order by the Legislature during the Second Regular Session. A copy of the draft joint order is included as Appendix D.

## **APPENDIX A**

**Legislation establishing the Blue Ribbon Commission  
to Study the Effects of Government Regulation and Health  
Insurance Costs on Small Businesses in Maine**



## CHAPTER 85

### S.P. 679 - L.D. 1905

#### **Resolve, Establishing a Blue Ribbon Commission to Study the Effects of Government Regulation and Health Insurance Costs on Small Businesses in Maine**

**Sec. 1. Commission established. Resolved:** That the Blue Ribbon Commission to Study the Effects of Government Regulation and Health Insurance Costs on Small Businesses, referred to in this resolve as the "commission," is established; and be it further

**Sec. 2. Commission membership. Resolved:** That the commission consists of 12 members appointed as follows: The Governor shall appoint 6 members, to include at least 2 members from the Governor's cabinet, one member representing the business sector, one member representing employee unions and one state employee; the Speaker of the House shall appoint 3 members, to include at least one Representative and one member representing the public sector; and the President of the Senate shall appoint 3 members, to include at least one Senator and one member representing the private sector; and be it further

**Sec. 3. Appointments; meetings. Resolved:** That all appointments must be made no later than 30 days following the effective date of this resolve. The Executive Director of the Legislative Council must be notified by all appointing authorities once the selections have been made. Within 15 days after appointment of all members, the Chair of the Legislative Council shall call and convene the first meeting of the commission. The commission shall select a chair from among its members; and be it further

**Sec. 4. Duties. Resolved:** That the commission shall study the effects of government regulation and health insurance costs on small businesses throughout the State; and be it further

**Sec. 5. Staff assistance. Resolved:** That the commission may request staffing assistance from the Legislative Council; and be it further

**Sec. 6. Expenses. Resolved:** That the members of the commission who are Legislators are entitled to receive the legislative per diem as defined in the Maine Revised Statutes, Title 3, section 2 and reimbursement for travel and other necessary expenses for attendance at meetings of the commission. Other members are not entitled to compensation or reimbursement of expenses; and be it further

**Sec. 7. Report. Resolved:** That no later than January 1, 1998, the commission shall submit its report, together with any necessary implementing legislation, to the Joint Standing Committee on Business and Economic Development and the Executive Director of the Legislative Council. The Joint Standing Committee on Business and Economic Development is authorized to



## **APPENDIX B**

**Members of the Blue Ribbon Commission to Study  
the Effects of Government Regulation and Health Insurance  
Costs on Small Businesses in Maine**









## **APPENDIX C**

**Draft Legislation Implementing the Recommendations of the  
Blue Ribbon Commission to Study the Effects of Government  
Regulation and Health Insurance Costs on Small Businesses in Maine**





**3. Review and evaluation.** Upon referral of a mandated health benefit proposal from the joint standing committee of the Legislature having jurisdiction over the proposal, the Bureau of Insurance shall conduct a review and evaluation of the mandated health benefit proposal and shall report to the committee in a timely manner. The report must include, at the minimum and to the extent that information is available, the following:

A. The social impact of mandating the benefit, including:

- (1) The extent to which the treatment or service is utilized by a significant portion of the population;
- (2) The extent to which the treatment or service is available to the population;
- (3) The extent to which insurance coverage for this treatment or service is already available;
- (4) If coverage is not generally available, the extent to which the lack of coverage results in persons being unable to obtain necessary health care treatment;
- (5) If the coverage is not generally available, the extent to which the lack of coverage results in unreasonable financial hardship on those persons needing treatment;
- (6) The level of public demand and the level of demand from providers for the treatment or service;
- (7) The level of public demand and the level of demand from the providers for individual or group insurance coverage of the treatment or service;
- (8) The level of interest ~~of~~ and extent to which collective bargaining organizations ~~in~~ are negotiating privately for inclusion of this coverage in group contracts;
- (9) The likelihood of achieving the objectives of meeting a consumer need as evidenced by the experience of other states;
- (10) The relevant findings of the state health planning agency or the appropriate health system agency relating to the social impact of the mandated benefit;
- (11) The alternatives to meeting the identified need;
- (12) Whether the benefit is a medical or a broader social need and whether it is consistent with the role of health insurance and the concept of managed care;
- (13) The impact of any social stigma attached to the benefit upon the market;
- (14) The impact of this benefit on the availability of other benefits currently being offered; ~~and~~
- (15) The impact of the benefit as it relates to employers shifting to self-insured plans and the extent to which the benefit is currently being offered by employers with self-insured plans; and
- (16) The impact of making the benefit applicable to the State Employee Health Insurance Program.

B. The financial impact of mandating the benefit, including:

- (1) The extent to which the proposed insurance coverage would increase or decrease the cost of the treatment or service over the next 5 years;
- (2) The extent to which the proposed coverage might increase the appropriate or inappropriate use of the treatment or service over the next 5 years;
- (3) The extent to which the mandated treatment or service might serve as an alternative for more expensive or less expensive treatment or service;
- (4) The methods that will be instituted to manage the utilization and costs of the proposed mandate;
- (5) The extent to which the insurance coverage may affect the number and types of providers of the mandated treatment or service over the next 5 years;
- (6) The extent to which insurance coverage of the health care service or provider may be reasonably expected to increase or decrease the insurance premium and administrative expenses of policyholders;
- (7) The impact of indirect costs, which are costs other than premiums and administrative costs, on the question of the costs and benefits of coverage;
- (8) The impact of this coverage on the total cost of health care; and
- (9) The effects on the cost of health care to employers and employees, including the financial impact on small employers, medium-sized employers and large employers;

C. The medical efficacy of mandating the benefit, including:

- (1) The contribution of the benefit to the quality of patient care and the health status of the population, including the results of any research demonstrating the medical efficacy of the treatment or service compared to alternatives or not providing the treatment or service; and
- (2) If the legislation seeks to mandate coverage of an additional class of practitioners:
  - (a) The results of any professionally acceptable research demonstrating the medical results achieved by the additional class of practitioners relative to those already covered; and
  - (b) The methods of the appropriate professional organization that assure clinical proficiency; and

D. The effects of balancing the social, economic and medical efficacy considerations, including:

- (1) The extent to which the need for coverage outweighs the costs of mandating the benefit for all policyholders; ~~and~~
- (2) The extent to which the problem of coverage may be solved by mandating the availability of the coverage as an option for policyholders; ~~and~~ and
- (3) The cumulative impact of mandating this benefit in combination with existing mandates on the costs and availability of coverage.

### **Summary**

This bill implements the recommendations of the Blue Ribbon Commission to Study the Effects of Government Regulation and Health Insurance Costs on Small Businesses in Maine.







**JOINT ORDER ESTABLISHING THE  
BLUE RIBBON COMMISSION TO STUDY THE EFFECTS  
OF GOVERNMENT REGULATION ON SMALL BUSINESSES IN MAINE**

ORDERED, that the Blue Ribbon Commission To Study the Effects of Government Regulation on Small Businesses in Maine is established as follows:

**1. Establishment.** The Blue Ribbon Commission To Study the Effects of Government Regulation on Small Businesses in Maine, referred to in this order as the commission, is established.

**2. Membership.** A member of the Blue Ribbon Commission to Study the Effects of Government Regulation and Health Insurance Costs on Small Businesses in Maine who was appointed pursuant to Resolve 1997, chapter 85 is appointed to the commission if that person agrees to serve on the commission. If a person appointed to the commission under Resolve 1997, chapter 85 does not agree to serve on the commission, a member must be appointed from the following list, by the appointing authority so noted, so that the commission has the following composition:

- A. One Senator, appointed by the President of the Senate;
- B. Two Representatives, appointed by the Speaker of the House;
- C. One member with expertise in state financial and professional regulation, appointed by the President of the Senate;
- D. One member with expertise in state economic and community development, appointed by the President of the Senate;
- E. One member with expertise in employee unions, appointed by the President of the Senate;
- F. One member who is a representative of an association of small business owners, appointed by the President of the Senate;
- G. One member who is an employee of a small business, appointed by the President of the Senate;
- H. One member with expertise in state financing of small business ventures, appointed by the Speaker of the House;
- I. Two members who represent the private sector, appointed by the Speaker of the House; and
- J. One member who is a State employee, appointed by the Speaker of the House.

**3. Appointments.** Appointments to the commission must be made no later than April 30, 1998. The appointing authorities shall notify the Executive Director of the Legislative Council upon making their appointments. When the appointment of all members is complete, the Chair of the Legislative Council shall call and convene the first meeting of the commission no later than May 15, 1998. The commission must select a chair from among its members.

**4. Meetings.** In conducting its duties, the commission may meet as often as necessary, within available budget resources, with any individuals, departments, organizations or institutions it considers appropriate.



## **APPENDIX E**

### **Draft Recommendations Considered by the Blue Ribbon Commission**





**Preliminary discussion:** This proposed recommendation was included in the written recommendations prepared by Commission member Jim McGregor, Maine Merchants Association. Commission members indicated they would not support a moratorium on the Legislature and noted that the Legislature would certainly not be bound by such a recommendation in the future.

*Tax incentives:*

**Recommendation:** Report out legislation that contains tax incentives aimed at individuals and small businesses. The purpose of the incentives would be to lower employee health insurance costs; encourage small businesses to provide their employees health insurance; and encourage employees to participate in workplace health insurance plans.

*Questions:* Include incentives similar to those attempted in past legislation? What is the individual income threshold for a truly effective tax incentive? How best to reach individuals and businesses with the highest needs for health insurance participation?

**Preliminary discussion:** This proposed recommendation was included in the written recommendations prepared by Commission member Jim McGregor, Maine Merchants Association. Commission members indicated support for such legislation and suggested piggybacking upon Senator Longley's proposed bill, LD 1931.

**Recommendation:** Report out legislation that asks Congress to improve access to medical savings accounts and step-up the phasing-in of the self-employment health insurance deduction, or address medical savings accounts and self-employed health insurance deduction at the state level.

*Community rating:*

**Recommendation:** Require the Bureau of Insurance to continue its survey of small employers to monitor the effects of the 1993 health insurance reforms.

*Questions:* Funding for the survey?

*Data on medical costs*

**Recommendation:** Create a statewide data base on the costs of medical treatments and services and a develop system of unrestricted distribution of that data. Report out legislation that provides the framework for collection, reporting and processing of the data. (Purpose: Collect data from all types of groups; provide the best data on costs with an eye toward reducing costs and increasing availability and use of health insurance.)

*Questions:* How does this relate to the purpose and scope of the Maine Health Data Organization? Would such an effort be duplicative at the state level? Should a data initiative like this be left to the private sector?

*Employee empowerment:*

**Recommendation:** Empower employees to make choices or participate in the choice of health insurance plans made available at a workplace. Accomplish this by making changes in the private purchasing alliance laws to make establishment of alliances more attractive.

*Private purchasing alliances:*

**Recommendation:** Encourage the establishment of private purchasing alliances by reporting out legislation that amends the alliance laws to allow brokers to participate in the development and management of alliances.

*Renewal information for small groups:*

**Recommendation:** Provide a holder of a small group policy the authority to request loss information at least 60 days prior to the renewal of the policy. Under current law, large group policyholders may make a written request to an insurer for loss information to be provided at least 60 days before renewal and 6 months after the issuance or renewal of a policy. Loss information is the aggregate claims experience of the group, including the amount of premiums received, the amount of claims paid and the loss ratio. Insurers are not required to provide this information to small groups.

*Questions:* In smaller groups, is there an ability to identify individuals through the nature and the amount of the claim despite the aggregate form of the information? Would there be an incentive to “dump” higher risks from the small group?

Regulation

*Cost of regulation:*

**Recommendation:** Report out legislation that requires all bills include a fiscal note that quantifies the bills’ cost impacts on small businesses.

*Public notice of law changes:*

**Recommendation:** Report out legislation that requires any change in laws that affect business licensing or regulation be communicated to affected business communities and funded for each department or agency if necessary.

*Contract/leased employees:*



**Recommendation:** Study the use of provisions in laws under which employers utilize part-time employees, contract services or employee leasing companies to avoid health insurance costs, workers compensation costs and the certain administrative costs.

*Market existing small business assistance:*

**Recommendation:** Report out legislation that provides the Department of Economic and Community Development to market the many DECD and non-DECD services available to assist start-up and existing businesses.

*Questions:* Is this relevant to the Commission's charge?

*Improve small business management:*

**Recommendation:** Report out legislation that establishes a program for improving the management skills of small business owners and managers. (Reason: Business success is most highly correlated to the quality of management - not to the availability of funding)

*Questions:* Is this relevant to the Commission's charge?

*DECD follow-up survey of assisted people:*

**Recommendation:** Encourage or require the Department of Economic and Community Development to conduct follow-up surveys of people who have received assistance through the agency's one-stop permit/regulation center to monitor customer satisfaction and receive input on improvements.

*Questions:* Is this relevant to Commission's charge?

## **APPENDIX F**

**Summaries of Meetings on December 1st, 10th and 17th**



# Summary of December 1, 1997 meeting of The Blue Ribbon Commission to Study the Effects of Government Regulation and Health Insurance Costs on Small Businesses in Maine

## Commission members attending:

- |                           |                     |
|---------------------------|---------------------|
| * Rep. Arthur F. Mayo     | * Catherine Longley |
| * Sen. Bruce W. MacKinnon | * Edward Gorham     |
| * Timothy Agnew           | * Jim McGregor      |
| * Douglas S. Carr         | * Peter Sassano     |
| * Thomas J. Giordano      |                     |

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**Election of chair:** Rep. Mayo was elected chair of the commission.

**Focus of study and timeframe:** The commission first discussed its general charge and its reporting date of January 1, 1998. The charge, spelled out in the law creating the commission, addresses two areas and is quite broad: To study the effects of : 1) government regulation and 2) health insurance costs on small businesses throughout the state. The commission decided that, considering its short timeframe, it would focus its study on health insurance costs. Members said the health insurance field provides defined issues that can be examined in a timely manner. In contrast, members said an examination of government regulation would require a great deal of time to survey problems and define solutions. Members decided to take a cursory review of government regulation relative to small businesses and make recommendations regarding further review. The commission decided to request a reporting deadline extension to January 15, 1998.

**Health insurance - areas of focus:** The commission's discussions regarding health insurance focused on three major areas: 1) mandated benefits; 2) incentives for employers to provide health care; and 3) identifying and defining the small business group market.

Mandated benefits: Members suggested the commission examine the Legislature's process for reviewing requests for mandated benefits; Maine's enactment of mandated benefits relative to other states; the application of mandated benefits to various types of insured groups; and the impact of mandated benefits on insurance costs and the ability of small businesses to provide their employees health insurance.

Incentives for providing insurance: Members suggested the commission examine the universe of available and potential incentives to encourage small businesses to provide health insurance and relieve small businesses from the high costs unique to small business health insurance. Incentives include tax credits, tax deductions and the provision of medical savings accounts.

The small business group market: Members heard input from an interested party that the commission would benefit from painting a portrait of the current small group market

- trends in types of plans utilized, pricing, availability, the effect of community rating, etc. Members discussed the need to develop a solid definition of “small business.”

To facilitate the commission’s discussion, it was agreed staff would compile a mailing consisting of background material on mandated benefits, small group health insurance and recent legislation proposing tax incentives for employer-provided health insurance.

**Regulation of small businesses:** Members agreed that for an initial review of government regulation it would be helpful to understand the spectrum of regulations to which a small business is subject. Staff will be working with the Department of Economic and Community Development to develop examples.

**Additional meetings:** The commission set the following five meeting dates:

- \* December 10, 9 a.m.-Noon, Room 221 of the State House
- \* December 17, 9 a.m. -Noon, Room 134 of the State House
- \* December 31, 9 a.m. -Noon, Room 334 of the State House
- \* January 6, 9 a.m. -Noon, Room 334 of the State House
- \* January 14 (tentative), 9 a.m. -Noon, Room 334 of the State House

## Summary of December 10, 1997 meeting of The Blue Ribbon Commission to Study the Effects of Government Regulation and Health Insurance Costs on Small Businesses in Maine

### Commission members attending:

- \* Rep. Arthur F. Mayo
- \* Sen. Bruce W. MacKinnon
- \* Rep. Jane Saxl
- \* Douglas S. Carr
- \* Catherine Longley
- \* Jim McGregor
- \* Peter Sassano

### Commission members absent:

- \* Commissioner McBrierty
  - \* Timothy Agnew
  - \* Thomas Giordano
  - \* Edward Gorham
  - \* Patrick Murphy
- 

**Extension letter:** Commission members reviewed the letter sent to the Legislative Council requesting an extension of the reporting date from January 1 to January 16. The Legislative Council will consider the extension request at its December 18th meeting.

**Review of Summary from December 1st meeting:** Commission members reviewed and accepted the summary of the first meeting prepared by staff.

**Overview of background material:** Staff provided a brief overview of mandated health benefits. Members discussed the differences between a mandated health benefit and mandated offer. Under current law, mandated health benefit proposals must undergo a review and evaluation by the Bureau of Insurance before being enacted into law. Mandated offers are not subject to these statutory procedures. Although the Legislature has followed these procedures, the Legislature cannot bind future Legislatures and is not constitutionally required to follow these procedures. However, to date, the Legislature has not exempted any mandated health benefit proposal from this process.

Staff reviewed the most recently enacted mandated health benefits and noted the expansion of the applicability of the mandates to health maintenance organizations. Staff also noted that one mandate proposal has been carried over to the Second Regular Session - LD 307, An Act to Allow Self-Referral for Obstetrical Care in Managed Care Plans. In addition, two titles have been accepted for consideration in the Second Regular Session that propose mandated health benefits: LR 2790, An Act to Require Health Insurance Coverage for InVitro Fertilization Procedures, sponsored by Rep. Jane Saxl; and LR 2902, An Act to Permit Off-Label Drug Use of Prescription Drugs for Cancer, HIV and AIDS, sponsored by Sen. Mark Lawrence.

**Tax incentives:** Staff also reviewed the legislative proposals from the 118th Legislature relating to tax incentives for small employers to provide health insurance to their employees. Although all of these proposals were voted out by the Taxation Committee “ONTP”, Commission members noted that there was interest in the proposals. The primary reason these proposals and other tax incentives were not fully considered was the decision by the Taxation Committee not to pursue individual tax reform proposals piecemeal but to address overall tax reform if possible. Members also noted that changes in the State’s revenues and the available surplus in the upcoming session may be factors that will positively influence the consideration of tax incentive proposals this session. Members asked staff for information at the next meeting related to tax incentive legislation in the next session.

**Small businesses in Maine:** Staff presented statistics on the number of small employers in the State based on data from the Maine Department of Labor. 96% of Maine’s private employers (excluding government) employ 50 or fewer employees. These businesses employ 49.1% of the total number of employees that work for Maine’s private employers.

**Small group presentation:** Rick Diamond of the Maine Bureau of Insurance spoke to the Commission about the status of the small group health insurance market. He noted that the small group market is more highly regulated than the large group market. One of the reasons he cited was the previous abuses by insurers who avoided insuring high-risk groups in favor of insuring only healthier risks. As a result of the small group reforms of guaranteed issuance, guaranteed renewal and community rating, small groups have gained increased access to health insurance. Mr. Diamond also reported that the small group market has about 20 indemnity insurers and five HMO’s offering insurance in this market. He noted, however, that costs of health insurance, especially for small employers, continues to be a factor in the decision of whether or not to offer insurance to employers as a benefit. Employers have tried to control costs through offering managed care plans, utilizing higher deductible plans and requiring higher percentages of employee contributions. Commission members noted that the Bureau of Insurance has a great source of data on small group market from previous surveys and encouraged the Bureau to continue to survey small employers as was done in 1993 and 1995.

#### **Small Business Issues - NFIB/Maine perspective:**

David Clough spoke briefly and provided materials to the Commission relating to issues facing small business. He noted that health insurance is second only to workers’ compensation as an area of concern to NFIB members in Maine. Mr. Clough addressed the shift in health insurance regulation that has taken place from state legislatures to Congress with the passage of HIPPA (Health Insurance Portability and Accountability Act). He told Commission members that NFIB is working for legislation in Congress to allow multi-state purchasing alliances. It is hoped that this type of legislation may combat the opinions of some that a voluntary purchasing alliance has not been established in Maine to date because of a lack of critical mass. Mr. Clough also noted the effect of ERISA on mandated health benefits and the exemption ERISA provides for large self-insured businesses. He also noted NFIB’s support for “bare bones” insurance policies;

accelerated deductions of health insurance premiums for self-employed individuals; and stronger malpractice laws.

**Small Business Regulation:** Staff provided an overview of three examples of the state licenses/regulations applicable to different businesses. The information was produced by the Department of Economic and Community Development's Business Answers program. Staff noted the cumulative effect of regulations on small business, not any one segment of regulation. However, staff noted the intricacies and complexities of DEP permitting and licensing for small businesses compared with other licensing requirements.

Brian Dancause and Dora Dostie of DECD provided an overview of the Business Answers program. The program is a point and click system data base that provides information and referrals for a large number of business activities in the State. The program has been in operation for three years and includes information relating to approximately 100 of the most common business activities in the State. They noted that increased access to business information through an internet webpage is under development by DECD. Commission members asked Brian and Dora what additional steps could be taken to assist small business. They noted several factors including: (1) increased resources for the one stop business licensing program and the Business Answers program; and (2) increased management-savvy through education of small business people. Commission members noted that DECD may want to follow up with individuals that have been assisted by the Business Answers program to determine their experience with state government regulation.

Members also noted that small businesses are often unaware of newly enacted laws and regulations. Members suggested that better notice to businesses is needed. Members also discussed the proposed legislation from the last legislative session requiring a measurement of the fiscal impact of legislation on the business community. Staff will provide additional information on that proposal at the next meeting.

#### **Small Group Health Insurance Issues - John Benoit, Holden Insurance Agency:**

John Benoit provided the Commission with his thoughts on the issues facing the small group health insurance marketplace. The biggest issues for small business are cost and access. However, because community rating has stabilized the costs in the market, the deciding factor for most small businesses is increasingly related to access. He gave the Commission an overview of the Maine Health Management Coalition, a private sector data initiative among employers seeking to impact the cost of the health care encounter. He noted the lack of such an initiative for small employers. Mr. Benoit noted the stabilization of the costs and the maturing of the risk that has taken place in the small group market since the enactment of community rating and other reforms. Other issues in the small group market include the inability of small employers to get information on experience more than 30 days before renewal of a policy and the lack of a purchasing alliance for small employers. Commission members invited Mr. Benoit to the next meeting to make a presentation on his private purchasing alliance model.



**Preliminary findings and recommendations:** Commission members deferred discussion of preliminary findings and recommendations to the next meeting. Staff will prepare a list of possible recommendations based on the discussion and presentations for the next meeting.

## Summary of December 17, 1997 meeting of The Blue Ribbon Commission to Study the Effects of Government Regulation and Health Insurance Costs on Small Businesses in Maine

### Commission members attending:

- \* Rep. Arthur F. Mayo
- \* Sen. Bruce W. MacKinnon
- \* Rep. Jane Saxl
- \* Timothy Agnew
- \* Douglas S. Carr
- \* Thomas Giordano
- \* Edward Gorham
- \* Tom McBrierty
- \* Jim McGregor
- \* Peter Sassano

### Commission members absent:

- \* Patrick Murphy
- \* Catherine Longley

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**Request for Extension:** The Legislative Council approved the Commission's request to extend the reporting date from January 1 to January 16.

**Review of Summary from December 10th meeting:** Commission members reviewed and accepted the summary of the December 10th meeting prepared by staff.

**Overview of background material:** Staff distributed an overview of the tax incentive proposals considered in the 118th Legislature's first session and noted that two titles will be considered in the next session that may relate to tax incentives for health insurance. One title - An Act to Create Incentives for Employers to Contribute toward the Costs of Comprehensive Health Insurance for Families - has been printed as LD 1931 and referred to the Taxation Committee. Commission member Tom Giordano distributed an overview of LD 1931 which provides a credit to employers providing health insurance equal to the excess of health insurance costs over 7.5% of gross payroll; a deduction for individuals equal to 20% of the health insurance premium paid by the taxpayer; and a reduction in the calculation of income for the purposes of eligibility for the Property Tax and Rent Rebate Program equal to the amount of insurance premium paid for preventive care. Member Giordano will bring information on the proposed fiscal note on LD 1931 to the next meeting.

Staff also briefly outlined LD 249, An Act to Require That All Legislative Documents Contain a Citizen and Business Impact Statement. This bill was considered last session but not enacted. The bill was modeled on the requirement that all legislation favorably reported out of committee have a fiscal note attached that estimates the financial impact of the legislation on state government and municipalities and counties. LD 249 would have required a similar statement on

legislation that addressed the impact on Maine citizens and businesses. The primary reasons for not enacting the bill were (1) the lack of staff resources in the Legislature; and (2) the belief that the public hearing process was the best forum for citizens and business to raise concerns about the impact of legislation.

Staff also highlighted the current statutory provisions governing private purchasing alliances in Maine. Although the law became effective in July 1996 and the rules governing alliances were finally adopted in March 1997, there are no licensed purchasing alliances in the State.

**Presentation on Purchasing Alliance for Small Group Market:** John Benoit, Holden Insurance Agency, spoke to the Commission for the second time on the status of the small group market and his concept for a small group purchasing alliance. He outlined the reasons he thinks a purchasing alliance is needed. Some of these reasons include the ability of small businesses to combine purchasing power and influence to spread the insurance risk across a larger group and the opportunity to provide more employee choice through an offering of multiple plans through the alliance. Mr. Benoit's purchasing alliance model utilizes the distribution of the alliance plan through the normal brokerage network with a common enrollment form and marketing material for carriers and health plans offered through the alliance. This would ensure that carriers belonging to the alliance are potentially presented and marketed to every employer in the State. While the participation of carriers and offering of multiple plans is similar to purchasing alliances developed in other states, Mr. Benoit's model is unique in the inclusion of a risk adjustment mechanism. The risk adjustment mechanism would combine the community rate requirements in the small group market with a reinsurance or stop loss insurance arrangement to minimize large losses for participating carriers.

At this point, Mr. Benoit's model is a concept although it has been presented to the Bureau of Insurance, the Maine Chamber and Business Alliance, the Greater Portland Chamber of Commerce and the Maine Health Management Coalition. The MHMC endorses the concept but is not interested in being the plan's sponsor because their members are large businesses. The Maine Chamber has explored the possibility of sponsoring a purchasing alliance but does not feel that it has the membership among small businesses to achieve the critical mass of enrollees needed to make an alliance viable. The Chamber's membership includes more large business among its members than small businesses.

The barriers to developing a purchasing alliance noted by Mr. Benoit include: the restriction on insurance agents and industry members to participate in the organization of the alliance; the risk adjustment provisions may need to be more detailed as to what types of arrangements are permissible; and the restrictive nature of the rules. The requirement that the alliance be nonprofit also removes the ability of private entrepreneurial efforts and the Commission may want to address that provision as well. The funding for the start up costs of an alliance (estimated to be between \$250,000 and \$500,000) are also a significant barrier. Currently, there are no provisions allowing state funding for the alliance.

**Preliminary Findings and Recommendations:** The Commission discussed preliminary findings and recommendations before the end of the meeting. Commission member, James McGregor,

offered a list of suggested recommendations. In its discussions, Commission members generally accepted all of Jim's suggestions but indicated it would not support a recommendation that the Legislature impose a moratorium on enacting mandated health insurance benefits for two years. Commission members will continue the discussion of findings and recommendations at the next meeting.



## **APPENDIX G**

### **History of Mandated Benefits**



## **Appendix H**

### **Mandated Health Benefits Procedures**





## **24A § 2752. Mandated health legislation procedures**

**1. Mandated health benefits proposals.** For purposes of this section, a mandated health benefit proposal is one that mandates health insurance coverage for specific health services, specific diseases or certain providers of health care services as part of individual or group health insurance policies. A mandated option is not a mandated benefit for purposes of this section.

**2. Procedures before legislative committees.** Whenever a legislative measure containing a mandated health benefit is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal among the members of the committee. If there is substantial support for the proposed mandate among members of the committee, the committee may refer the proposal to the Bureau of Insurance for review and evaluation pursuant to subsection 3. A proposed mandate may not be enacted into law unless review and evaluation pursuant to subsection 3 has been completed.

**3. Review and evaluation.** Upon referral of a mandated health benefit proposal from the joint standing committee of the Legislature having jurisdiction over the proposal, the Bureau of Insurance shall conduct a review and evaluation of the mandated health benefit proposal and shall report to the committee in a timely manner. The report must include, at the minimum and to the extent that information is available, the following:

**A. The social impact of mandating the benefit, including:**

- (1) The extent to which the treatment or service is utilized by a significant portion of the population;
- (2) The extent to which the treatment or service is available to the population;
- (3) The extent to which insurance coverage for this treatment or service is already available;
- (4) If coverage is not generally available, the extent to which the lack of coverage results in persons being unable to obtain necessary health care treatment;
- (5) If the coverage is not generally available, the extent to which the lack of coverage results in unreasonable financial hardship on those persons needing treatment;
- (6) The level of public demand and the level of demand from providers for the treatment or service;
- (7) The level of public demand and the level of demand from the providers for individual or group insurance coverage of the treatment or service;

- (8) The level of interest of collective bargaining organizations in negotiating privately for inclusion of this coverage in group contracts;
- (9) The likelihood of achieving the objectives of meeting a consumer need as evidenced by the experience of other states;
- (10) The relevant findings of the state health planning agency or the appropriate health system agency relating to the social impact of the mandated benefit;
- (11) The alternatives to meeting the identified need;
- (12) Whether the benefit is a medical or a broader social need and whether it is consistent with the role of health insurance;
- (13) The impact of any social stigma attached to the benefit upon the market;
- (14) The impact of this benefit on the availability of other benefits currently being offered; and
- (15) The impact of the benefit as it relates to employers shifting to self-insured plans;

**B. The financial impact of mandating the benefit, including:**

- (1) The extent to which the proposed insurance coverage would increase or decrease the cost of the treatment or service over the next 5 years;
- (2) The extent to which the proposed coverage might increase the appropriate or inappropriate use of the treatment or service over the next 5 years;
- (3) The extent to which the mandated treatment or service might serve as an alternative for more expensive or less expensive treatment or service;
- (4) The methods that will be instituted to manage the utilization and costs of the proposed mandate;
- (5) The extent to which the insurance coverage may affect the number and types of providers of the mandated treatment or service over the next 5 years;
- (6) The extent to which insurance coverage of the health care service or provider may be reasonably expected to increase or decrease the insurance premium and administrative expenses of policyholders;
- (7) The impact of indirect costs, which are costs other than premiums and administrative costs, on the question of the costs and benefits of coverage;

(8) The impact of this coverage on the total cost of health care; and

the financial impact on small employers, medium-sized employers and large employers;

(1) The contribution of the benefit to the quality of patient care and the health status of the population, including the results of any research demonstrating the providing the treatment or service; and

(2) If the legislation seeks to mandate coverage of an additional class of

(a) The results of any professionally acceptable research demonstrating the medical results achieved by the additional class of practitioners relative to

(b) The methods of the appropriate professional organization that assure clinical proficiency; and

including:

(1) The extent to which the need for coverage outweighs the costs of mandating

(2) The extent to which the problem of coverage may be solved by mandating the availability of the coverage as an option for policyholders.



## **APPENDIX I**

**Memo from Rick Diamond, Life and Health Actuary, Maine Bureau of  
Insurance on Cost of Mandated Benefits, March 1996**









## **APPENDIX K**

**National Center for Policy Analysis Study on Costs of Mandated Benefits  
Conducted by Milliman and Robertson**



## **APPENDIX L**

### **Statutory Provision Relating to Regulatory Agenda**



## **5 § 8060. Regulatory agenda**

Each agency with the authority to adopt rules shall issue to the appropriate joint standing committee or committees of the Legislature and to the Secretary of State an agency regulatory agenda as provided in this section.

**1. Contents of agenda.** Each agency regulatory agenda to the maximum possible extent shall contain the following information:

- A. A list of rules that the agency expects to propose prior to the next regulatory agenda due date;
- B. The statutory or other basis for adoption of the rule;
- C. The purpose of the rule;
- D. The contemplated schedule for adoption of the rule;
- E. An identification and listing of potentially benefited and regulated parties; and
- F. A list of all emergency rules adopted since the previous regulatory agenda due date.

**2. Due date.** A regulatory agenda must be issued between the beginning of a regular legislative session and 100 days after adjournment.

**3. Legislative copies.** The agency shall provide copies of the agency regulatory agenda to the Legislature as provided in section 8053-A.

**4. Availability.** An agency which issues an agency regulatory agenda shall provide copies to interested persons.

**5. Legislative review of agency regulatory agendas.** Each regulatory agenda shall be reviewed by the appropriate joint standing committee of the Legislature at a meeting called for the purpose. The committee may review more than one agenda at a meeting.

**6. Application.** Nothing in this section or section 8053-A may be construed to prohibit agencies from adopting emergency rules that have not been listed or included in the regulatory agenda pursuant to this section.